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| 10/660,915 | 09/12/2003 | Kevin Damewood | SMCY-P01-103 | 7338 |
| 28120 | 7590 | 09/11/2007 | EXAMINER | |
| ROPES & GRAY LLP | | | SINGH, SUNIL | |
| PATENT DOCKETING 39/41 | | | ART UNIT | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/660,915

Applicant(s)

DAMEWOOD, KEVIN

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8-20, 23, 24, 27-31, 53 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-20, 23, 24, 27-31, 53 and 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2,3,53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 2 calls for "one or more additional sections, each additional section moveable relative to at least the first, second or another of the additional section"; however, the written description does not adequately describe how this additional section relates to the first and second section to enable one skilled in the art to make and/or use the invention as claimed. For example, is the additional section along the longitudinal axis of the bed or the transverse axis of the bed?

Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure never provided basis the controller to be programmable to recall one or more positions of the first section **relative to** the second section, thus such language constitute new matter.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,5-6,8-11,16-17,23,24,27,53,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewin (US 2649595).

Lewin discloses an adjustable mattress (see Figs. 4-7 and 13-14) comprising a first section and a second section (see attached marked up drawings in previous office action (12/11/06)) overlying a rigid platform (26,26'), the first section and the second section moveable relative to each other (see Figs. 4,5) and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Figs.5 and 13) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (this is considered as the bottom of member (20)) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections. The first sheet section (see attached marked up drawings in previous office action (12/11/06)) a second sheet section (see attached marked up drawings in previous office action (12/11/06)) and hinged section (see attached marked up section). One or more additional sections (see attached marked up drawings in

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previous office action (12/11/06)). Second mechanical unit (see Figs. 5 and 6).

Mattress cover (22,24). Padding (23). Foundation (this is considered as the box spring, see col. 4 line 55). Spring core (see col. 3 line 5+). Controller (75). Arms (45). Base element (21) and platform (27,40). Frame (see col. 4 line 55+). The other sheet (see attached marked up drawings in previous office action (12/11/06)).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin.

With regards to claims 12-15, Lewin is silent about the controller being wireless and programmable. Controllers that are wireless and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Lewin to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

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7. Claims 18,19, 20, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin in view of Reeder et al. '209.

Lewin discloses the invention substantially as claimed. However, Lewin is silent about the first mechanical drive unit comprising a DC motor and worm gear. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Lewin by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Lewin since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

With regards to claim 31, it would have been considered obvious to one of ordinary skill in the art to modify Lewin to include a wireless controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

8. Claims 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin.

With regards to claims 56-57, Lewin is silent about the flexible sheet being made out of plywood or plastic. Flexible support made out of plywood or plastic is old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Lewin to include either a plywood or plastic flexible sheet since such an arrangement would provide some rigidity for support as well as afford some flexibility to facilitate the raising of the head and/or foot portion of the mattress.

Response to Arguments

9. Applicant's arguments filed 6/14/07 have been fully considered but they are not persuasive. Applicant argues that paragraphs [0007] and [0036] describes the invention called for in claims 2,3,53. The examiner disagrees. Claim 2 calls for "one or more additional sections, each additional section moveable relative to at least the first, second or another of the additional section"; however, the written description does not adequately describe how this additional section relates to the first and second section to enable one skilled in the art to make and/or use the invention as claimed. For example, is the additional section along the longitudinal axis of the bed or the transverse axis of the bed?

Applicant argues that Lewin fails to disclose a first sheet and second sheet connected to by a hinge. The examiner disagrees. As indicated in the marked up drawings, the first sheet is attached to the second sheet by a hinge e.g. a living hinge (see how the mattress moves from Figure 4 to Figure 5 shows there is a hinge connecting a first and second sheet). The Figures shown in applicant's application, namely Figure 1C is the same as Levin Figure 5. It should be noted that the flexible sheet is considered as the bottom member of member 20. Applicant argues that neither member 27 nor 26 of Lewin is a flexible sheet member. The examiner never considered members 26 or 27 as the flexible sheet member but instead the bottom of member (20) which is flexible.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

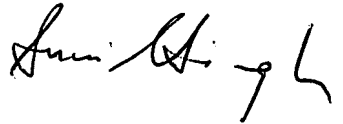
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh
Primary Examiner
Art Unit 3673



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8/27/07